

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

JOSEPH E. LOWN, III,

Respondent.

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No. 13-1633 PO

DECISION

Cause exists to discipline the peace officer license of Respondent Joseph E. Lown, III because he committed a criminal offense.

Procedure

On September 12, 2013, Petitioner Director of the Department of Public Safety filed a complaint seeking to discipline Mr. Lown's peace officer license. Mr. Lown was personally served on October 18, 2013, but did not file an answer. By failing to answer or otherwise respond to the complaint, Mr. Lown has admitted the allegations it contains. 1 CSR 15-3.380(7)(C)1.¹

The Director filed a motion for summary decision on November 27, 2013. Mr. Lown filed a response on December 19, 2013.

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

Under 1 CSR 15-3.446(6)(A), we may grant summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” The parties must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B). The Director submitted a business records affidavit and certified court records from the Laclede County Circuit Court with his motion. The affidavit is admissible evidence under 1 CSR 15-3.446(6)(B). The certified records are admissible evidence under § 490.130, RSMo (2000).

Additionally, and as noted above, Mr. Lown has admitted the allegations contained in the Director’s complaint, and such admissions are admissible evidence. *See United Mo. Bank, N.A. v. City of Grandview*, 179 S.W.3d 362, 371 (Mo. App. W.D. 2005) (admissions against interest are admissible).

Mr. Lown offered no admissible evidence, such as a sworn statement, in response to the Director’s motion, only his written argument, to the effect that the complainants in the underlying criminal proceeding against him had lied. A party’s bare argument does not suffice to deny or dispute properly supported facts. *See Rice v. Hodapp*, 919 S.W.2d 240, 244 (Mo. banc 1996) (“Mere opinion fails to raise any issue of material fact that precludes summary judgment.”).

Although we will further address Mr. Lown’s argument in our conclusions of law, we draw the findings of fact from the admitted allegations contained in the complaint, and the admissible evidence submitted by the Director with his motion.

Findings of Fact

1. Joseph E. Lown, III possesses a peace officer license issued by the Director of the Department of Public Safety. That license was valid at all times pertaining to this action.
2. On March 4, 2013, Mr. Lown pled guilty in the Laclede County Circuit Court to one count of deviate sexual assault, a class C felony, case no. 11LA-CR00557-01. He admitted in his

petition to enter a plea of guilty in the criminal proceeding that he “had deviate sexual intercourse with A.W. knowing that it was without the consent of A.W.”²

3. Mr. Lown is presently serving his seven-year sentence in the custody of the Missouri Department of Corrections.

Conclusions of Law

We have jurisdiction. § 590.080.2, RSMo (Supp. 2012).

The Director is responsible for filing a complaint alleging cause exists to impose discipline, *id.*, and bears the burden of proving so by a preponderance of the evidence, *see Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Kerwin*, 375 S.W.3d at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Here, the Director alleges there is cause for discipline of Mr. Lown’s peace officer license under § 590.080.1(2), which so provides when a licensee “[h]as committed any criminal offense, whether or not a criminal charge has been filed[.]” We agree with the Director.

A guilty plea is competent and substantial evidence of the commission of a crime. *Dir., Dep’t of Public Safety v. Bishop*, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). Mr. Lown admitted in his petition to enter his plea of guilty that he committed the crime of deviate sexual assault, § 566.070, RSMo (2000) (“deviate sexual intercourse with another person knowing that he or she does so without that person’s consent”)³, and he in fact pled guilty to the crime.

² Motion Exhibit 2.

³ This crime was renumbered as § 566.061, effective August 28, 2013. 2013 Mo. Session Laws 563 (H.B. 215). The elements of the crime did not change.

Further, Mr. Lown's conviction is a final judgment because he was sentenced. *State v. Moore*, 352 S.W.3d 392, 398 (Mo.App. E.D. 2011). A final judgment resulting from a guilty plea collaterally estops him from attempting to prove that he did not commit the crime. *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004). Therefore, even if Mr. Lown had offered admissible evidence to support his argument that he did not commit the crime, such evidence could not have tipped the scale in his favor.

The Director has established by a preponderance of the evidence that Mr. Lown committed a criminal offense, and the Director has therefore established cause under § 590.080.1(2).

Summary

The Director has cause under § 590.080.1(2) to discipline Mr. Lown's peace officer license.

We cancel the hearing presently set for February 5, 2014.

SO ORDERED on January 2, 2014.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner